HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.799 to 809 OF 2006

W.A.No.799 of 2006

Between:

The Revenue Divisional Officer,
Narsapur, West Godavari District
and another

. . .Appellants

AND

A.V.Venkaiah

. . .Respondent

Counsel for the appellants : Government Pleader for Civil Supplies

Counsel for the respondent : Sri Y.H.V.R.R.Swamy

W.A.No.800 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Smt. D.Krishnaveni

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.801 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Smt. Ch.Kameswari

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.802 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Smt. V.Padmaja

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.803 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Sri U.Chanti Babu

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.804 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Sri M.V.Subbaiah

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.805 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Sri Maddi Venkata Swamy

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.806 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Sri Maddi Krishna Murthy

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.807 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Sri Devaki Guru Brahmam

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.808 of 2006

Between:

The Government of Andhra Pradesh
and others

. . .Appellants

AND

Smt. Nallam Ratna Kumari

. . .Respondent

Counsel for the appellants : Government Pleader for
Civil Supplies

Counsel for the respondent : Mr. Y.Srinivas
for Shri T.S.Anand

W.A.No.809 of 2006

Between:

The Joint Collector (CS), Eluru
and others

. . .Appellants

AND

M.Venkateswarlu and others

. . .Respondents

Counsel for the appellants : Government Pleader for Civil Supplies

Counsel for the respondents : Mr. Y.Srinivas for Shri T.S.Anand

Dated: 3rd August, 2006

: JUDGMENT :

Per G.S.SINGHVI, CJ

These appeals are directed against order dated 20.03.2006 whereby the learned Single Judge allowed Writ Petitions No.5320, 5345 and 5452 to 5460 of 2006 filed by the respondents and quashed orders dated 25-2-2006 passed by Joint Collector, West Godavari District, Eluru (appellant No.2 herein) dismissing the appeals preferred by them against the orders of Revenue Divisional Officer, Narsapur, West Godavari District (appellant No.1 herein) who cancelled the authorization of fair price shop dealership.

For the sake of convenient reference, we have taken the facts from the record of Writ Appeal No.799 of 2006.

Respondent – A.V. Venkaiah is a fair price shop dealer of Bhimavaram Town. On receipt of report dated 3-10-2004 submitted by Mandal Revenue Officer that the fair price shop dealer was committing several irregularities, appellant No.1 issued proceedings dated 6-10-2004 requiring the respondent to submit his explanation in respect of the allegations of irregularities in the distribution of essential commodities. It was alleged that the respondent had been distributing rice, sugar and other essential commodities on the basis of bogus cards. In his reply, the respondent denied the allegations. Thereafter, appellant No.1 issued show cause notice dated 16-5-2005 for holding enquiry against the respondent. The respondent appeared before the Enquiry Officer and claimed that he had not supplied essential commodities to the bogus cardholders. Thereafter, vide order dated 10-6-2005, respondent No.1 cancelled the dealership of the respondent. That order was set aside by the learned Single Judge in the writ petitions filed by the respondent and other similarly situated persons. However, liberty was given to appellant No.1 to issue fresh notice to pass fresh order in accordance with law.

By taking cue from the order passed by the learned Single Judge, appellant No.1 issued fresh show cause notice dated 9-11-2005 to the respondent proposing to hold enquiry into the seven charges framed against him. The respondent filed reply and denied the charges. By an order dated 20-12-2005, appellant No.1 cancelled the respondent's authorization as fair price shop dealer.

The respondent challenged the aforementioned order by filing writ petition under Article 226 of the Constitution of India. Similar petitions were filed by other fair price shop dealers whose authorization had been cancelled by appellant No.1. By an order

dated 28.12.2005, the learned Single Judge dismissed the writ petitions on the ground of availability of alternative remedy of appeal. The appeals preferred by the respondent and others were dismissed by appellant No.2 vide his orders dated 25-2-2006.

The orders dated 20.12.2005 and 25.02.2006 passed by appellant Nos. 1 and 2 respectively became subject matter of the writ petitions to which reference has been made hereinabove. The learned Single Judge elaborately referred to the allegations levelled against Shri M.V.Subbaiah (petitioner in W.P.No.5452 of 2006), reply filed by him and concluded that the orders impugned in the writ petitions are vitiated due to violation of rules of natural justice. The learned Single Judge also castigated the orders passed by respondent Nos. 1 and 2 by recording the following observations:

> "This Court must record its deprecation of the total lawlessness of the RDO and Joint Collector with regard to the exercise of quasi judicial powers of control over the FP shop dealers. A copy of the Vigilance report dated 10.3.2005 was not communicated to the petitioners. This non-communicated report is the foundation for the conclusions by the RDO. The Joint collector is satisfied with the manner in which the RDO had exercised his jurisdiction and does not bother to independently examine the charges against the petitioners in the context of the explanation submitted by them nor is there even a sentence of reasoning in the orders of the Joint Collector, which could even constitute an apology for exercise of appellate jurisdiction."

After recording the above observations, the learned Single Judge quashed orders dated 25-2-2006 and remitted the appeals preferred by the writ petitioners for fresh determination by appellant No.1. Simultaneously, he imposed costs of Rs.5,000/- in each of the petitions with a direction that Rs.1,000/- out of the amount of costs be paid to the petitioners and Rs.4,000/- be deposited with Andhra Pradesh Legal Services Authority. He also directed the State Government to identify

whether orders dated 25-2-2006 constitutes misconduct of quasi-judicial responsibility warranting initiation of proceedings and also whether the costs should be recovered from the concerned officer. The relevant extracts of the order passed by the learned Single Judge which contain various directions given by him are reproduced below:

> "The several orders of the Joint Collector dated 25-2-2006 dismissing the appeals preferred by the petitioners against the orders of the RDO dated 20-12-2005 (canceling the petitioners' authorizations) are wholly arbitrary and illegal. They are bereft of any reasons recorded in support of the conclusion and beseech invalidation. The impugned orders of the Joint Collector dated 25-2-2006 are quashed. The appeals are remitted back for fresh determination. The Joint Collector, West Godavari District, Eluru, is directed to hear and dispose of each of the appeals and record clear reasons dealing with each and every objection submitted by the reasons dealing with each and every objection submitted by the petitioners in their appeal grounds and pass appropriate orders and communicate the orders to the petitioners, expeditiously, and in any event, within a period of three weeks from the date of receipt of a copy of this order.
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> As the Joint Collector, West Godavari District has in total abdication of the appellate discipline, passed highly unsatisfactory and totally unreasoned appellate orders and has thus burdened this Court with avoidable litigation besides putting the petitioners to avoidable litigation, this Court considers it appropriate to allow these writ petitions with costs in an amount of Rs.5,000/- (Rupees five thousand only) in each of the writ petitions. Of this amount, Rs.1000/- (Rupees one thousand only) shall be paid to the respective petitioners, and Rs.4000/- (Rupees four thousand only) to the Secretary, A.P. Legal Services Authority in each of the writ petitions, within a period of two weeks from the date of this order.
>
> It is open to the State Government –the first respondent to identify whether the appellate order in its degree of negligence constitutes misconduct of quasi judicial responsibility as to warrant initiation of appropriate proceedings and whether the costs incurred by the State thereby, should be recovered from the concerned and responsible Officer instead of mulcting the

public exchequer for the misconduct of a particular State authority.

Till the disposal of the appeals afresh, as directed above, by the Joint Collector, West Godavari District, authorizations of the petitioners' shall continue and their future continuance would depend upon the appellate orders to be now passed."

The appellants have challenged the order of the learned Single Judge on several grounds, the most important being that they were not given opportunity to controvert the factual matrix of the case and produce record before the Court to justify the cancellation of authorization of the fair price shop dealership of the respondent. This is evinced from ground No.6 of the Memorandum of Writ Appeal No.799 of 2006, which is reproduced below:

"6. That the Vigilance and Enforcement officials who have conducted the inspections on the FP Shop, submitted a report recommending for necessary action against the erring FP Shop dealer and accordingly charges were framed, opportunity was given, explanation was called for and opportunity of hearing was also given and finally based on the evidence the orders were passed by the Revenue Divisional Officer, which were later confirmed by the Revenue Divisional Officer, which were later confirmed by the Appellate Authority and the plea raised by the petitioners

in the writ petitions that there was no recommendation by the Vigilance and Enforcement officials to take action against them and in the absence of such a recommendation, the original authority/revenue authorities cannot take any action and on the contrary, it is the revenue officials who have created the bogus cards and the petitioners in the writ petitions have been made a scape-goat and which allegations or averments are found favour with by the learned Single Judge without there being any supportive material filed by the petitioners and there was no opportunity to the appellants herein to file a detailed counter affidavit denying the averments made in the writ affidavit, in as much as, the writ petition was disposed of at the admission stage and hence the order under appeal is highly unreasonable, apart from being in gross violation of principles

of natural justice, and hence the orders under appeal are liable to be set aside."

On merits, the appellants have pleaded that the action taken against the writ petitioners was justified because they had indulged in large scale black marketing of the essential commodities and were guilty of misappropriation of the goods meant for distribution to the needy people, who are eligible to receive ration from fair price shops.

We have heard learned Government Pleader for Civil Supplies for the appellants and Shri Y.H.V.R.R.Swamy and
Shri Y.Srinivas, counsel for the respondents.

At the commencement of arguments, Shri Srinivas, learned counsel appearing for the respondents in Writ Appeal Nos.800 to 809 of 2006 brought to our notice that in compliance of the direction given by the learned Single Judge, appellant No.2 i.e., Joint Collector, Eluru, West Godavari District has already heard arguments on the appeal preferred by the respondents and orders are reserved.

The aforementioned statement of Shri Srinivas has not been controverted by the learned Government Pleader for Civil Supplies. He, however, submitted that the order under challenge should be set aside only on the ground of denial of reasonable opportunity to the appellants to controvert the allegations contained in the writ petitions. He then argued that even if the learned Single Judge, after considering the counter-affidavit filed on behalf of the non-petitioners (appellants herein), could reasonably come to a conclusion that the orders passed by appellant Nos. 1 and 2 are legally unsustainable, there could be no justification to pass strictures on the officers concerned, impose costs and make a suggestive observation for initiation of disciplinary action against the officers and, in any case, such order could not have been passed and directions given without hearing the officers concerned.

Learned counsel for the respondents fairly submitted that if the Division Bench deems it appropriate, then the order passed by the learned Single Judge for imposition of costs and the direction given by him on the issue of recovery of costs from the officers concerned and initiation of departmental enquiry may be set aside.

We have thoughtfully considered the entire matter. From the record of these appeals, we find that some of the cases were instituted in third week of March, 2006. The proceeding sheets of the cases show that all the petitions were taken up together and disposed of by a common order without giving even seven days time to the respondents to file counter-affidavits. This naturally resulted in denial of opportunity to the non-petitioners (appellants herein) to controvert the allegations contained in the writ petitions and also produce records to support the findings and conclusions recorded by the appellants. We may hasten to add that after going through the pleadings of the parties and the record produced by the non-petitioners, the learned Single Judge may still have come to the conclusion that the orders passed by appellant No.1 are vitiated due to violation of rules of natural justice inasmuch as copy of Vigilance Report which constituted the foundation of the order had not been supplied to the writ petitioners. The learned Single Judge may also have come to the conclusion that the orders dated 25-2-2006 passed by appellant No.1 do not satisfy the test of a 'speaking order'. However, we do not find any justification for denial of bear minimum opportunity to the non-petitioners in the writ petitions to present their cause before the Court by filing counter-affidavits and producing the relevant records.

In our view, while exercising jurisdiction under Article 226 of the Constitution of India, this Court is as much duty bound to comply with the rule of audi alteram partem as any executive authority is obliged to comply with the said rule and it is not open to the Court to pass an

order adversely affecting any litigant without giving him substantive and reasonable opportunity to defend the cause set up on him/her.

In view of the above discussion, we would have set aside the order of the learned Single Judge and remanded the writ petitions for fresh adjudication, but, as the direction given in the impugned order has been substantially complied with, inasmuch as the appeals preferred by the respondents have already been heard by the Joint Collector and orders are reserved, we do not consider it proper to interfere with the substantive direction given by the learned Single Judge more so because the learned Government Pleader has not been able to successfully assail the finding of the learned Single Judge that the orders of cancellation of authorization of fair price shops were passed by appellant No.1 without supplying copy of the Vigilance Report to the writ petitioners.

However, we are convinced that the order passed by the learned Single Judge for imposing costs and suggestive direction given by him to the State Government to initiate disciplinary action against appellant No.2 and recover costs from him are liable to be set aside because neither of the two officers who had passed the orders impugned in the writ petitions were impleaded as parties and on that account, neither of them got opportunity to defend himself before the learned Single Judge.

In the result, the appeals are disposed of in the following terms:

i) The direction given by the learned Single Judge for fresh determination of the appeals preferred by the writ petitioners (respondents herein) is upheld.

ii) The observations made by the learned Single Judge that the orders passed by Revenue Divisional Officer and Joint Collector reflect total lawlessness on the part of the officers concerned as also the imposition of costs of

Rs.5,000/- in each of the writ petitions are set aside.

iii) The observations made by the learned Single Judge that the State Government may institute disciplinary enquiry against appellant No.2 and may recover costs from him are also struck down.

As a sequel to disposal of the appeals in the manner indicated above, we direct appellant No.2 to pass appropriate orders on the appeals preferred by the respondents without being influenced by the proceedings of this litigation. Needless to say that appellant No.2 shall have to pass speaking orders after objectively considering the replies filed by each of the writ petitioners and plea taken by them against the orders of cancellation of authorization passed by appellant No.1.

With a view to curtail any further litigation, we direct that Joint Collector, Eluru, West Godavari shall pass fresh orders as early as possible, but latest within a period of six weeks from today.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 03.08.2006

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Note:
The Court Officer is directed to give copies of this judgment to the Government Pleader for Civil Supplies and counsel for respondents.
(By order)
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